IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.725 OF 2004

Khamjibhai Keshavji Patel .. Appellant

vs.

Jaswant Kumar Hasanand Bhatia .. Respondent.

Shri Rajiv Patil, Advocate for the Appellant.

ShriV.M.Telreja, Advocate for the Respondent No.2
Shri N.B.Shah with Piyush Shah for Respondent No.3

CORAM : A.S.OKA, J.

DATED : 29th March, 2005.

P.C. :

1. The Appellant Original Plaintiff has taken exception to judgment and order dated 14.7.2004 passed by the learned Trial Judge in which the Application made by the Appellant Plaintiff for temporary injunction at exhibit 64 has been rejected. Prayer in the application at exhibit 64 is for temporary injunction restraining the Respondent Nos.1 to 3 (Defendant Nos.1 to 3) from causing obstruction to the possession of the Appellant/Plaintiff over the shop No.16. The Defendant No.3 made an application at exhibit 77

in the same suit praying that he may be put in possession of shop No.16. By the impugned Judgment and Order the application made by the Appellant at Exhibit 64 has been rejected and the application made by the Original Defendant No.3, Respondent No.3 at exhibit 77 has been allowed.

2. It is not in dispute that the order passed on application at Exhibit 77 was challenged by the Appellant by filing Writ Petition 7046 of 2004 under Article 227 of Constitution of India. The said Writ Petition has been disposed of by order dated 4.11.2004 without disturbing the order passed below application at Exhibit 77. In the said order the learned Single Judge of this Court recorded that the Respondent No.3 has taken possession of shop No.16. The learned Judge has also recorded undertaking by Respondent No.3 as under :

> In view thereof Respondent No.3 has filed the undertaking stating that he will not create third party interest nor will part with possession of shop No.16 and that he will hand over vacant possession of the suit property to the decree holder within a period of 30 days from the date of decree subject to his right of appeal.

The Single Judge also directed that the suit filed by the Appellant shall be decided as expeditiously as possible and preferably within a period of 6 months from that date.

3. Thus the position which now emerges is that the Respondent No.3 is in possession of shop no.16 and hence the prayer made by the Appellant in application at exhibit 64 for prohibitory injunction and for appoinment of Court Commissioner cannot be granted.

4. In this view of the matter the appeal is not entertained and the same is dismissed. It is obvious that the findings which are recorded by the Trial Court are for limited purpose of deciding the Applications at exhibit 64 and exhibit 77 and the learned Trial Judge will decide the pending suit without being influenced by the said prima facie findings.

5. At this stage, Shri Patil appearing for the Appellant makes a grievance that Respondent No.3 has made addition and alterations to shop

No.16 and is likely to make further additions and alterations to the said shop. Shri Shah appearing for the Respondent No.3 states that Respondent No.3 will not make any major additions and alterations to shop No.16 till disposal of the suit. The said statement is accepted.

. All parties and the concerned Court to act on the authenticated copy of this order.

(A.S.Oka, J.)